

transported by a common carrier, or carried, transported, moved, or allowed to be moved. “Movement” and “move” shall be construed in accordance with this definition.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Protected area. Those States or countries designated in § 301.38-3(c) of this subpart.

Rust-resistant plants. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* species, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,² and that are listed as rust-resistant under § 301.38-2 (b) and (c).

Rust-susceptible plants. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* species not listed as rust-resistant under § 301.38-2 (b) and (c).

Regulated article. Any article listed in § 301.38-2 (a) through (d) of this subpart or otherwise designated as a regulated article in accordance with § 301.38-2(e) of this subpart.

Seedling. Any plant of the genera *Berberis*, *Mahoberberis*, and *Mahonia* grown from seed and having less than 2 years’ growth.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

²Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.*, a known rust-susceptible variety of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

Two years’ growth. The growth of a plant during all growing seasons of 2 successive calendar years.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989]

§ 301.38-2 Regulated articles.

The following are regulated articles:³

(a) All seedlings and plants of less than 2 years’ growth of the genus *Berberis*.

(b) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species.

B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. calliantha
B. candidula
B. candidula ‘Amstelveen’
B. cavallieri
B. chenaulti
B. chenaulti ‘Apricot Queen’
B. circumserrata
B. concinna
B. corii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepaini
B. gilgiana
B. gladwynensis
B. gladwynensis ‘William Penn’
B. gyalalaica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. julianae
B. julianae ‘Nana’
B. julianae ‘Spring Glory’
B. koreana
B. koreana X *B. thunbergii* hybrid *Bailse*
B. koreana X *B. thunbergii* hybrid *Tara*
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. ‘Orange King’
B. lologensis
B. manipurana
B. media ‘Park Jewel’
B. media ‘Red Jewel’
B. mentorensis
B. pallens

³Permit and other requirements for the interstate movement of black stem rust organisms are contained in part 330 of this chapter.

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B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. stenophylla
B. stenophylla diversifolia
B. stenophylla irwini
B. stenophylla gracilis
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii aurea
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea 'Golden Ring'
B. thunbergii atropurpurea 'Intermedia'
B. thunbergii atropurpurea 'Knight Burgundy'
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea 'Redbird'
B. thunbergii atropurpurea 'Rose Glow'
B. thunbergii 'Bagatelle'
B. thunbergii 'Bailone'
B. thunbergii 'Bailtwo'
B. thunbergii 'Bonanza Gold'
B. thunbergii 'Crimson Pygmy'
B. thunbergii 'Dwarf Jewell'
B. thunbergii erecta
B. thunbergii 'globe'
B. thunbergii 'golden'
B. thunbergii 'Harlequin'
B. thunbergii 'Helmond Pillar'
B. thunbergii 'Kobold'
B. thunbergii 'Lustre Green'
B. thunbergii maximowiczii
B. thunbergii minor
B. thunbergii 'Monry'
B. thunbergii 'Monlers'
B. thunbergii 'Monomb'
B. thunbergii 'Pink Queen'
B. thunbergii pluriflora
B. thunbergii 'Sparkle'
B. thunbergii 'Thornless'
B. thunbergii 'Upright Jewell'
B. thunbergii variegata
B. thunbergii xanthocarpa
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon

(c) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species, except *Mahonia* cuttings for decorative purposes:

(1) Genera *Mahoberberis*:

M. aquicandidula

M. aquisargentiae
M. miethkeana

(2) Genera *Mahonia*:

M. amplexens
M. aquifolium
M. aquifolium atropurpurea
M. aquifolium compacta
M. aquifolium compacta 'John Muir'
M. aquifolium 'Donewell'
M. aquifolium 'Kings Ransom'
M. aquifolium 'Orangee Flame'
M. aquifolium 'Winter Sun'
M. 'Arthur Menzies'
M. bealei
M. dictyota
M. fortunei
M. 'Golden Abundance'
M. japonica
M. lomarifolia
M. nervosa
M. pinnata
M. pinnata 'Ken Hartman'
M. piperiana
M. pumila
M. repens

(d) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the general *Berberis*, *Mahoberberis*, and *Mahonia*, and seedlings from rust-susceptible species and varieties of the genera *Mahoberberis* and *Mahonia*, except *Mahonia* cuttings for decorative purposes.

(e) Any other product or article not listed in paragraphs (a) through (d) of this section, that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989, as amended at 56 FR 7784, Feb. 26, 1991; 57 FR 54166, Nov. 17, 1992; 58 FR 8820, Feb. 17, 1993; 59 FR 9066, Feb. 25, 1994; 59 FR 17917, Apr. 15, 1994; 60 FR 38667, July 28, 1995]

§ 301.38-3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (c) of this section any State that has eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State eradication program. In addition, the State must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5, and maintain and enforce an inspection program